

EXHIBIT G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re:)
W.R. GRACE & CO., et al,) Chapter 11
Debtors.) Case No. 01-1139 (JKF)
_____) Volume I

VIDEOTAPED DEPOSITION OF ALAN C. WHITEHOUSE, M.D.
Taken at the instance of the Debtors

March 19, 2009

8:30 a.m.

818 W. Riverside Avenue

Spokane, Washington

BRIDGES REPORTING & LEGAL VIDEO
Certified Shorthand Reporters
1312 N. Monroe Street
Spokane, Washington 99201
(509) 456-0586 - (800) 358-2345

1 BE IT REMEMBERED that the videotaped
2 deposition of ALAN C. WHITEHOUSE, M.D., was taken in
3 behalf of the Debtors pursuant to the Federal Rules of
4 Civil Procedure before William J. Bridges, Certified
5 Shorthand Reporter for Washington, Idaho and Oregon, on
6 Thursday, the 19th day of March, 2009, at the law offices
7 of Evans, Craven & Lackie, 818 W. Riverside Avenue, Suite
8 250, Spokane, Washington, commencing at the hour of 8:30
9 a.m.

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I N D E X:

W.R. GRACE & CO., et al

Case No. 01-1139 (JKF)

March 19, 2009

T E S T I M O N Y

ALAN C. WHITEHOUSE

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PRODUCTION REQUESTS:

X-rays or CT's for Raymond Siefke in Dr.
Whitehouse's possession or CARD Clinic's possession

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1 THE VIDEOGRAPHER: Good morning. Here
2 begins the deposition of Dr. Alan C. Whitehouse in
3 regarding W.R. Grace & Co. in the United States
4 Bankruptcy Court for the District of Delaware. The case
5 number is 01-1139 (JKF).

6 Today's date is March 19, 2009. The time is
7 approximately 8:32. The deposition is being taken at
8 Evans, Craven & Lackie, 818 West Riverside, Suite 250,
9 Spokane, Washington.

10 The videographer is Greg Glover, the court
11 reporter is William Bridges, both here on behalf of
12 Bridges Reporting and Legal Video located at 1312 North
13 Monroe, Spokane, Washington, 99201.

14 Would counsel and all present please identify
15 yourselves and state whom you represent.

16 MR. STANSBURY: Brian Stansbury of
17 Kirkland & Ellis, and I represent W.R. Grace & Company.

18 MR. HEBERLING: Jon Heberling of
19 McGarvey, Heberling, Sullivan & McGarvey, representing
20 the Libby claimants.

21 MR. SCHIAVONI: Good morning, Doctor.
22 Tancred Schiaoni from O'Melveny & Myers. I represent
23 Arrow Wood.

24 MS. LEE: Karen Lee, Kirkland & Ellis,
25 representing W.R. Grace.

1 MR. STANSBURY: People on the phone,
2 could you introduce yourselves please, again, for the
3 benefit of the court reporter.

4 MS. STOVER: Laura Stover, Eckert
5 Seamans, Cherin & Mellot, representing Maryland Casualty
6 Company and Zurich American Insurance Company.

7 MR. BAILOR: Bernard Bailor from Caplin &
8 Drysdale, Washington, D.C., representing the Asbestos
9 Claimants Committee.

10 MR. GUY: Jonathan Guy, Orrick,
11 Herrington & Sutcliffe, representing the Future Claimants
12 Representatives for P.I. claims.

13 MR. BLABEY: David Blabey, Kramer, Levin,
14 Naftalis & Frankel, representing the Equity Committee.

15 MS. DeCRISTOFARO: Elizabeth
16 DeCristofaro, Ford, Marrin, Esposito, Witmeyer & Gleser,
17 for Continental Casualty Company.

18 THE VIDEOGRAPHER: Would the court
19 reporter please swear in the witness.

20
21 (ALAN C. WHITEHOUSE, called as a witness by
22 the Debtors, being first duly sworn to tell the truth,
23 the whole truth and nothing but the truth, was examined
24 and testified as follows:)

EXAMINATION

BY MR. STANSBURY:

Q. Good morning, sir.

A. Good morning.

Q. Could you please state your name for the record?

A. Alan Whitehouse.

Q. And you are a medical doctor, right?

A. I am.

Q. Dr. Whitehouse, my name is Brian Stansbury. I represent W.R. Grace.

Before we get started, I wanted to go over a few background issues just to make sure we were on the same page. I know this isn't your first time at the rodeo. But I wanted to ask you a few questions.

First of all, I'm going to assume you understand my question, unless you say otherwise.

Is that fair?

A. That's fair. I have some hearing problems, though.

Q. Okay. Please let me know if at any time I'm talking too fast or you do not understand my question. Okay?

A. Okay.

1 Q. Additionally, I will ask that when I am
2 asking a question, that you will allow me to finish the
3 question before answering, and I will strive to do the
4 same when you are answering the questions. That way the
5 court reporter keeps the record clear.

6 Does that sound good?

7 A. Okay.

8 Q. Additionally, when answering questions, I
9 will ask that you answer with an audible yes or no, as
10 opposed to a nod, just, again, so the record is clear.

11 Is that fair?

12 A. Yes.

13 Q. Are you under any medication today that would
14 affect your ability to answer questions?

15 A. I don't think so.

16 Q. Okay. All right. Dr. Whitehouse, I'm
17 handing you what's been marked as Exhibit 1. And this is
18 a deposition notice for today.

19 And you are Dr. Alan C. Whitehouse, correct?

20 A. That's correct.

21 Q. Okay. And you intend to offer expert
22 testimony in the matter of In re: W.R. Grace & Company,
23 correct?

24 A. I do.

25 Q. Okay. And it is March 19th, 2009, correct?

1 A. Yes.

2 Q. Okay. Now, I'm going to hand you what's been
3 marked as Exhibit 2. And this document is entitled Libby
4 Claimants' Preliminary Objections to First Amended Joint
5 Chapter 11 Plan.

6 Have you ever seen this document before?

7 (Pause in the proceedings).

8 A. I have not seen this specific document. I am
9 familiar with what's in it, though.

10 Q. All right.

11 A. But I am reading it right now.

12 Q. All right. The reason I present this to you
13 is it is my understanding that the Libby claimants are
14 objecting to the proponents' plan.

15 And on page 2 there's a list of criticisms.
16 And I think you may have opinions with respect to some of
17 them. And I wanted to ensure that you do or do not.

18 The first, and I'll read, and tell me if I am
19 reading this correctly, "The TDP excludes legitimate
20 Libby claims by requiring the blunting of the
21 costophrenic angle as a criterion for disease level."

22 Do you see that?

23 A. Yes.

24 Q. Did I read that correctly?

25 A. Yes.

1 Q. Do you agree with that statement?

2 A. I do.

3 Q. Okay. Next statement. "The TDP excludes
4 legitimate Libby claims by requiring a minimum three
5 millimeter pleural thickening as a criterion for disease
6 level."

7 Do you see that statement?

8 A. Yes.

9 Q. Do you agree with that?

10 A. Yes.

11 Q. Okay. Next, "The TDP excludes legitimate
12 Libby claims by requiring pleural thickening coverage of
13 over 25 percent as a criterion for disease level."

14 Did I read that correctly?

15 A. Yes.

16 Q. Do you agree with that statement?

17 A. I do.

18 Q. Next, "The TDP excludes legitimate Libby
19 claims by not permitting the use of DLCO to establish
20 severity and impairment of asbestos-related disease."

21 Did I read that correctly?

22 A. Yes.

23 Q. Do you agree with that statement?

24 A. I do.

25 Q. Next, "The TDP excludes legitimate Libby

1 claims by requiring an FEV1/FVC ratio over 65 percent as
2 a criterion for disease level."

3 Did I read that correctly?

4 A. Yes.

5 Q. And do you agree with that statement?

6 A. I do.

7 Q. Now, you intend to offer opinions at a
8 hearing related to the disease that various Libby
9 claimants have, is that correct?

10 A. That's correct.

11 Q. And based on these statements, it is your
12 belief that the current mechanism for assessing claims
13 does not properly characterize Libby disease?

14 Is that true?

15 MR. HEBERLING: Objection. Calls for a
16 legal conclusion.

17 THE WITNESS: Basically -- Repeat the
18 question again.

19 MR. STANSBURY: Would you read back the
20 last question, please sir.

21 (Record read).

22 THE WITNESS: I agree.

23 Q. (BY MR. STANSBURY:) And just so I am clear,
24 when we are talking about disease and Libby, are we
25 talking primarily about the interstitial disease in Libby

1 or the pleural disease in Libby?

2 A. We are talking about everything, but
3 predominantly the pleural disease.

4 Q. So, your objection is really to the way we
5 are dealing with pleural disease, is that correct?

6 A. Not entirely.

7 Q. Primarily?

8 A. Primarily.

9 Q. And do you believe that the pleural disease
10 suffered by people in Libby exposed to tremolite from
11 Libby is distinct from pleural disease other people
12 exposed to other asbestos may have?

13 A. Well, to begin with, your statement is
14 incorrect, because it's not tremolite that we are talking
15 about. We are talking about winchite, richterite and
16 tiny amounts of tremolite.

17 So, we're talking about a different category
18 of asbestos, in part.

19 Q. And so I am clear, that that mixture of
20 minerals has been referred to in the past as the Libby
21 amphibole, is that correct?

22 A. That's correct.

23 Q. Okay. So, with that caveat, is it your
24 belief that people who have been exposed to this
25 winchite, richterite, tremolite hybrid are -- have a

1 pleural disease that is distinct from individuals who
2 have been exposed to other forms of asbestos?

3 A. "Distinct" is a difficult word to use in that
4 situation.

5 There are manifestations of it that are
6 frequently different. They are much more severe in
7 general. Any of these findings may be seen in other
8 types of asbestos. It is just the degree. We have to
9 clarify what we are talking about.

10 Q. All right. Well, let's clarify what we are
11 talking about, just so we are clear. Do you believe
12 that people who have been exposed to winchite,
13 richterite, tremolite from Libby have a more severe form
14 of pleural disease than people exposed to, let's say,
15 chrysotile?

16 A. Yes. Clearly.

17 Q. Okay. Do you believe that people exposed to
18 winchite, richterite, tremolite from Libby have a more
19 severe pleural disease than people exposed to amosite?

20 A. That's not been totally established,
21 because there's -- You might want to use the term
22 amphiboles. Okay?

23 Q. Okay. Let me back up, just so that I am
24 clear.

25 A. Why don't you back it up, put it into a

1 category that works.

2 Q. Sure. Sure. So, on the -- and maybe this is
3 important, then. So, perhaps it's not winchite,
4 richterite, tremolite that it creating the more severe
5 pleural disease, it is all amphiboles in general, is that
6 correct?

7 A. There's two parts -- There's more than one
8 part of the answer to that.

9 One is that all amphiboles seem to have more
10 pleural disease, and that's true from the Australian
11 studies and other studies.

12 But in addition, it would appear as if Libby
13 asbestos, and this is somewhat preliminary, is worse than
14 amosite, not yet established whether it's worse than
15 Australian crocidolite. It may very well be.

16 Q. All right. So, you've said a lot there, and
17 let's unpack that.

18 Chrysotile you firmly believe does not cause
19 the same severe pleural disease that winchite,
20 richterite, tremolite does, correct?

21 A. Yes.

22 Q. Okay. And as you just said, amosite likely
23 does not cause as severe pleural disease as winchite,
24 richterite, tremolite do, is that correct?

25 A. When you look at the studies of, like,

1 insulators, they were exposed to both chrysotile and
2 amosite, because that was the mixture that was in most of
3 the asbestos on the East Coast.

4 So, how you distinguish those two clearly,
5 one from the other, is difficult to do, because you can't
6 do both exposures at the same time.

7 To my knowledge, there are a few studies
8 relative to amosite alone. I'm not really very familiar
9 with those.

10 Q. Okay. So, you're more familiar, then, with
11 studies involving chrysotile, crocidolite, and I believe
12 you mentioned --

13 A. Uh-huh.

14 Q. -- the experience with it when you were in
15 Australia?

16 A. Yes.

17 Q. And those are studies authored by Cookson, is
18 that correct?

19 A. And others.

20 Q. And others. But Cookson has written studies
21 about -- -

22 A. Cookson, and other people.

23 Q. So, you don't necessarily have an opinion at
24 this time as to how pleural disease from exposure to
25 winchite, richterite, tremolite, compares to amosite,

1 A. No, not necessarily. I think the other two
2 physicians that work up in the CARD clinic, Dr. Black,
3 and Dr. Heppe, both recognize that just as well as I do.

4 I would dare say, though, that there are a
5 limited number of people in this country that really
6 understand the significance of that, and those are the
7 people that work, and generally are pulmonologists who
8 work all the time with people with asbestos disease.

9 Q. What is Dr. Heppe's first name?

10 A. Mark.

11 Q. Mark. And what is his background?

12 A. He's an internist.

13 Q. What is an internist?

14 A. That's a physician that practices general
15 internal medicine. He's done that for years. He's very
16 experienced. And he's been at the clinic for a couple of
17 years. And he's also been seeing this stuff for years in
18 the emergency room at the hospital.

19 Q. Did he do a residency in pulmonology?

20 A. No.

21 Q. Did he do a residency in radiology?

22 A. No.

23 Q. Did he do a residency in occupational
24 medicine?

25 A. No.

1 Q. Did he do a fellowship in radiology?

2 A. No. All of these questions are going to be
3 no, and you know it, even before you ask me.

4 Q. Well, I just want to make sure, just so he
5 have this understanding.

6 A. Well, you're making the assumption that
7 because you had all of this particular training, that you
8 can't see things, you know.

9 Competent physicians with an open mind who
10 are inquisitive see these things. And they understand.
11 And it doesn't take them very long. They read the
12 literature. And we have a wealth of literature up there
13 available to us. And they get it.

14 Q. So, Dr. Heppe has not completed a residency
15 or fellowship in radiology, pulmonology or occupational
16 medicine, correct?

17 A. No.

18 Q. Okay. The other physician is Dr. Brad Black,
19 is that correct?

20 A. That's correct.

21 Q. And Dr. Brad Black has not completed a
22 residency or a fellowship in radiology, pulmonology or
23 occupational medicine, correct?

24 A. That's correct.

25 Q. His primary training is a pediatrician,

1 correct?

2 A. Originally, yes.

3 Q. Okay. But correct, yes?

4 A. Yes. That's correct.

5 Q. Okay. And asbestos disease is not very
6 common in children, is it?

7 A. I'm not so sure about that anymore. But
8 probably not.

9 Q. When they --

10 A. We're going to find that out in about 10
11 years.

12 Q. We're going to find that out in 10 years.
13 Why is that?

14 A. Because we've got a ton of children that have
15 been exposed to this stuff.

16 Q. When? Do you know?

17 A. All along here.

18 Q. All along?

19 A. But particularly, all along from, regardless
20 of when they were born. But in the last 10, 20 years, as
21 well.

22 Q. Currently, ongoing?

23 A. Probably. But I don't know the extent of it
24 now.

25 Q. Do you know anything about the levels of

1 didn't get referral letters from lawyers sending me
2 patients at all." That is your testimony?

3 A. I believe so. I don't recall getting any.

4 Q. I'm handing you what has been marked as
5 Exhibit 57. Actually, let me see that for one second,
6 please, if I could have that back. Sorry about that.

7 I'm handing you what has been marked as
8 Exhibit 57. This was a record produced to W.R. Grace in
9 March of 2006 by the CARD Clinic under the direction of
10 the U.S. Government in connection with the criminal case,
11 and these were the records for the individuals whose
12 records were the basis of your published study.

13 And here we see a letter dated December 14th,
14 1995, and it begins, "Thank you for referring" blank, and
15 the person's name is redacted, "for evaluation of
16 asbestosis."

17 Did I read that correctly?

18 A. Yes.

19 Q. And the recipient of this will is redacted,
20 correct?

21 A. Yes.

22 Q. If you will turn to the next page, please.

23 A. All right.

24 Q. Last line before "Sincerely yours."

25 A. Okay.

1 Q. "Thank you for referring him for an
2 evaluation."

3 Did I read that correctly?

4 A. Yes.

5 Q. All right. Now I am going to hand you what
6 has been marked as Exhibit 58. Keep this letter here,
7 please. This letter was produced to us a month later,
8 redacted, by the U.S. Government, and I believe that you
9 will see that Exhibits 57 and 58 are identical.

10 Do you see that?

11 A. Obviously I wrote a letter.

12 Q. Now, who was the recipient of the letter on
13 the December 14th, 1995 letter?

14 A. Mr. Heberling.

15 Q. Jon Heberling. So, this is an example of a
16 referral from an attorney, correct?

17 A. I guess you would have to consider that, yes.
18 I made an error.

19 Q. You said "Thank you for referring," correct?

20 A. Yes.

21 Q. But you had also said that there were no
22 letters, correct?

23 A. I didn't recall any at the time that I was
24 deposed.

25 Q. Okay. I'm handing you what has been marked

1 as Exhibit 59. And if you will compare this document to
2 Exhibit 58, the patient identifier, 550-493.

3 (Pause in the proceedings).

4 Q. And this is indeed, if I am not mistaken, a
5 letter from Mr. Heberling, referring this individual to
6 you, correct?

7 A. And then on the bottom it says DNKA, did not
8 keep his appointment.

9 Q. Did not keep his appointment. But judging by
10 your letter here --

11 A. He must have later, yeah.

12 Q. All right.

13 A. He had an appointment in October, and he
14 didn't show.

15 Q. Okay. This was a person referred by Mr.
16 Heberling, then, correct?

17 A. I assume it, yeah.

18 Q. Which would be inconsistent with your earlier
19 testimony, correct?

20 A. Which would be what?

21 Q. Inconsistent in your testimony in the
22 previous deposition, in which you said there were no
23 referrals and no letters.

24 A. I guess you are right. Unfortunately, the
25 reason it got dropped is because the guy didn't show up

1 the first time.

2 Q. Okay.

3 A. And then did on his own.

4 Q. I'm handing you what has been marked as
5 Exhibit 60. Do you recognize the handwriting on this
6 piece of paper?

7 A. No.

8 Q. This was a note given to me by Nurse Kimberly
9 Rowse at the CARD Clinic. Is that Nurse Rowse's
10 handwriting?

11 A. It probably is, yes.

12 Q. She's the head nurse at the CARD Clinic?

13 A. Yes, she is. Yeah. Well, she's sort of the
14 manager there, yeah. I guess that is her handwriting.
15 It is in pencil, isn't it.

16 Q. I am handing you what has been marked as
17 Exhibit 61, and this is a letter dated October 13 --
18 August 13, 1997. Once again, for LP055. Another
19 individual from your study. This is produced in March of
20 2006 where the redactions were handled through the CARD
21 Clinic.

22 What does it say above the addressee of this
23 letter, which has been redacted?

24 MR. HEBERLING: Objection. We don't know
25 that this person is from the study. I mean, you're

1 representing that. But the record does not so reflect as
2 of yet.

3 THE WITNESS: I can't read it.

4 Q. (BY MR. STANSBURY:) What about before "Thank
5 you"? What does that say?

6 A. "Referring M.D."

7 Q. What does that mean?

8 A. I don't know.

9 Q. What does "referring M.D." mean?

10 A. It means that there was an M.D. that may have
11 referred the patient. But it says, "Thank you for
12 referring him," and there is something crossed out. It
13 is very short. So, I don't know what it is.

14 Q. Okay.

15 A. I have no idea whether it was anybody even in
16 this study.

17 Q. But the doctor who referred this has been
18 redacted, correct?

19 A. I guess. I'm sure it is, yeah.

20 Q. Okay. I'm handing you what's been marked as
21 Exhibit 62. If you will look, this is also a letter from
22 August 13th, 1997. This was produced in April of 2006.
23 The redactions were handled by the U.S. Government at
24 this time.

25 Now we see under what was "referring M.D." on

1 the previous exhibit, the recipient of this letter was
2 Jon Heberling, attorney.

3 A. I see that. And again, who's the patient?

4 Q. The patient, the information has been
5 redacted from us, is LP, if you look at the document. He
6 was LP055, was how it was produced to us in March of
7 2006. We were not permitted to know the names, and
8 personal identifiable information was redacted.

9 The broader patient records were produced to
10 us in April of 2006, and we received this record, and
11 this 550 was from the 550 database that you referenced in
12 your report.

13 A. Yeah. But that wasn't necessarily the ones
14 that were in here either.

15 Q. But that's the same person, isn't it? Look
16 at those letters.

17 A. Oh, yeah. It's the same person, yeah.

18 Q. So, the first letter, the LP055.

19 A. Yeah.

20 Q. Okay. This is clearly a referral from Jon
21 Heberling, is it not?

22 A. Well, it is or it is not. It says "Enclosed
23 is a copy of the workup I did." I write sometimes --
24 what happens is I ask the patient about referring
25 physicians or anybody that they want me to send the

1 workup to, and then I will send it with a cover letter.
2 And this is a typical cover letter.

3 When somebody refers it, I usually say, thank
4 you for referring somebody. This one says, "Enclosed is
5 a copy of the workup."

6 I don't know that he referred the patient at
7 all. I have no idea.

8 Q. If you will look at the bottom of Exhibit --
9 I'm sorry. Which Exhibit Number is unredacted?

10 A. This one?

11 Q. Yeah. What Exhibit Number is that?

12 A. What is the number?

13 Q. Yes. Exhibit Number.

14 A. Oh. 62.

15 Q. At the bottom of Exhibit 62 does it not
16 say, "Jon, thank you for referring him." Is that
17 correct?

18 A. Well, I guess it does, yes.

19 Q. So, it sounds to me like this is again
20 another referral.

21 A. It may very well be.

22 Q. Okay. So, once again, the prior testimony,
23 about there being no referrals in this study, may not be
24 accurate, correct?

25 A. It may be.

1 Q. Okay. I'm handing you what has been marked
2 as Exhibit 63, which is a medical record for LP076 dated
3 September 25th, 1996.

4 Once again, the recipient of the letter has
5 been redacted in this version produced in March of 2006,
6 but as it says, "Thank you for referring him."

7 We do not know who the addressee is. Is that
8 correct?

9 A. It's covered up here.

10 Q. Right.

11 A. I assume you have another copy of it.

12 Q. You assume correctly. I'm handing you what
13 has been marked as Exhibit 64, which is the same letter,
14 also dated September 25th, 1996, for 550-538. Again,
15 this is produced under the direction and redaction of the
16 U.S. government, and once again, the recipient of the
17 letter is Jon Heberling, is it not?

18 A. How do I know that any of these were in this
19 study?

20 Q. Well, you produced those records in March of
21 2006.

22 A. Yeah. But we produced 500 and some odd
23 records.

24 Q. In March of 2006 you produced 123.

25 MR. HEBERLING: Brian, you're going to

1 have to establish this in the record in another way. You
2 can't ask him these questions.

3 Q. (BY MR. STANSBURY:) Dr. Whitehouse, you
4 produced these records through the U.S. government, they
5 were made available for use in the bankruptcy.

6 MR. HEBERLING: Objection, misstates the
7 record.

8 THE WITNESS: The government also has the
9 records on the whole database.

10 Q. (BY MR. STANSBURY:) Which whole database?

11 A. The 550 that were in my database.

12 Q. That's exactly what that second record is.
13 It came from --

14 A. Yeah. But what does it have to do
15 necessarily with this paper?

16 Q. Because they are the same people.

17 MR. HEBERLING: Objection, argumentative.
18 Ask him questions.

19 THE WITNESS: Tell me that it's one of
20 the ones in here, and prove to me that it's one of the
21 ones in here, not just one that's in the 550.

22 Q. (BY MR. STANSBURY:) Was Jay Swennes in your
23 study?

24 COURT REPORTER: Say that again?

25 MR. STANSBURY: Jay Swennes.

1 S-W-E-N-N-E-S.

2 A. I think he was, yes.

3 Q. All right.

4 A. Jay Swennes -- There's two Swennes'. There's
5 a Jeff and a Jay.

6 Q. Excuse me. Jeff. Was Jeff Swennes in your
7 study?

8 A. I believe he was.

9 MR. STANSBURY: What Exhibit Number are
10 we on?

11 THE WITNESS: This was long before that
12 study was even thought about, five years before that.

13 MR. STANSBURY: What exhibit number are
14 we on?

15 MS. LEE: 65.

16 Q. (BY MR. STANSBURY:) I'm handing you Exhibit
17 65, which is another copy of the December 15th, 1995
18 letter where you are thanking Jon Heberling for the
19 referral. This letter was produced as part of a PIQ.
20 Again, we see that it is Jeff Swennes --

21 MR. HEBERLING: Objection. Argumentative
22 and lack of foundation.

23 Just ask him questions. Don't argue with
24 him.

25 Q. (BY MR. STANSBURY:) If you want to, you can

1 compare that to this letter right here, tell me if they
2 are the same letter, Exhibit 57. They should match.

3 This confusion over who is who is an issue of
4 CARD's creation, not --

5 MR. HEBERLING: Objection, argumentative.

6 Q. (BY MR. STANSBURY:) Is that the same person,
7 Dr. Whitehouse?

8 MR. HEBERLING: CARD --

9 THE WITNESS: It looks like it was. But,
10 you know, I didn't create any -- If you have problems
11 with CARD, it's nothing that I had anything to do with.
12 Your people came in there, made copies of charts. The
13 feds made copies of charts. I had nothing to do with any
14 of that.

15 Q. (BY MR. STANSBURY:) Well, clearly --

16 A. So, don't put it on me.

17 MR. HEBERLING: In the criminal case,
18 Grace obtained permission to go back to CARD in the two
19 or three weeks before the criminal case started on the
20 representation to the court that they had screwed up all
21 the identifications of the patient numbers, and they
22 didn't know what they had. So, they had to copy it all
23 over again.

24 Q. (BY MR. STANSBURY:) Is Jeff Swennes in your
25 study, sir?

1 MR. HEBERLING: So, if you want to get
2 into an argument on the issues, I think that's a good
3 one.

4 THE WITNESS: I don't know. Because I
5 don't have my computer here. He may be. He may very
6 well be. I'm very familiar with Jeff.

7 Q. (BY MR. STANSBURY:) And is that the same
8 letter as Exhibit 57?

9 MR. HEBERLING: Objection, unclear as to
10 what he is referring to.

11 Q. (BY MR. STANSBURY:) Which exhibit do you
12 have in your hand?

13 A. Well, wait a minute. It is not. The typing
14 is different. It's very different. Look at this. This
15 thing is big, broad type. This is little tiny type.

16 Q. I believe the copies are different. But if
17 you want to look word for word, Dr. Whitehouse, I believe
18 these are the exact same letters. If you can find any
19 words that are different that are unredacted, please do
20 so.

21 But one looks like it was copied in a much
22 larger font than another. But these are the same
23 letters. Jeff Swennes, as this letter indicates, was
24 referred by Mr. Heberling.

25 MR. HEBERLING: Objection, argument,

1 lack of foundation. None of this is in the record.

2 (Pause in the proceedings).

3 THE WITNESS: Whose copy is this
4 (indicating)?

5 Q. (BY MR. STANSBURY:) That was a copy I pulled
6 out.

7 A. I see.

8 MR. SCHIAVONI: I've never in my career
9 seen someone intervene in a bankruptcy and not say who
10 they are as a client. And I have a standing objection to
11 that process taking place here. None of the other --

12 I don't know what's happened with Grace, but
13 no creditor in this case has consented to people
14 appearing in the bankruptcy secretly.

15 To the extent we can't cross-examine them
16 because their names are blotted out, I'm being
17 substantially prejudiced.

18 Q. (BY MR. STANSBURY:) Just so the record is
19 clear, Exhibit 57, a letter that was produced and marked
20 LP072, December 14, 1995, thanking Mr. Heberling for a
21 referral, is the same letter as Exhibit 65, December 14,
22 1995, in which it's clear that the recipient of this
23 letter was Jon Heberling. It was redacted in Exhibit 57.
24 It isn't here.

25 Do you still stand by your statement --

1 disease causes DLCO, that you did not take into account
2 the statements in this ATS statement, this ATS/ERS
3 statement regarding lung function?

4 A. No. Do you want me to take into account
5 every statement that you've come up relative to this?

6 This is something that I'm not intimately
7 familiar with. So, you can read a statement out of that
8 and I'm supposed to agree or disagree with it, when I've
9 got another statement that may be contrary with that.
10 And that's basically what you're doing here.

11 Q. Well, let's continue with the rest of this
12 paragraph.

13 A. And, you know, I'm tired, and I don't feel
14 very well, and I'm going to end this deposition now.
15 Okay.

16 Q. Dr. Whitehouse, we have not gotten through
17 all of the material. I still have more time.

18 A. I don't care whether you have or not. You
19 are going to have another chance, another crack at me.
20 I'm done. Okay?

21 Q. Dr. Whitehouse --

22 MR. HEBERLING: I'm sorry, Brian --

23 Q. (BY MR. STANSBURY:) -- let's take a break.
24 Are you walking out of this deposition?

25 A. I'm walking out.

1 MR. HEBERLING: He's already gone beyond
2 probably what he should have. Now, he's not been well.

3 MR. STANSBURY: This is not what we
4 agreed to.

5 MR. HEBERLING: You can't agree on what
6 his condition's going to be at the time of deposition.

7 MR. STANSBURY: We will depose you again.

8 MR. HEBERLING: Oh, yes. You may do
9 that.

10 THE WITNESS: You'll get your other crack
11 at me. But we're done for today. That's all there is
12 to it.

13 MR. HEBERLING: When you're 71 years old,
14 maybe you will understand this. I mean, you've been at
15 him since 8:30 this morning.

16 THE VIDEOGRAPHER: Are we going --

17 MR. STANSBURY: Stay on the record.

18 MR. SCHIAVONI: John, I don't need to go
19 on. I will just reserve my rights. Is that acceptable?

20 MR. HEBERLING: Certainly you may reserve
21 your rights. You'll get another chance. But, you know,
22 I'll bet we've gone farther than we should have gone
23 already.

24 MR. STANSBURY: And what is the time,
25 sir?

1 THE VIDEOGRAPHER: The time is --

2 MR. HEBERLING: Two o'clock.

3 MR. STANSBURY: No, no, the time of the
4 deposition.

5 THE VIDEOGRAPHER: Oh. The total time.

6 THE WITNESS: Six hours.

7 MR. STANSBURY: No, it is not.

8 THE WITNESS: Well, five hours. Excuse
9 me. We had a half an hour for lunch.

10 (Pause in the proceedings).

11 THE VIDEOGRAPHER: It is four hours 24
12 minutes.

13 MR. HEBERLING: Okay. Brian, off the
14 record. Do you really need a copy of that? You've got
15 one. I mean, there's nothing, I will represent to you,
16 that that is the thing that -- the same thing that we
17 delivered to everybody in December.

18 MR. STANSBURY: You didn't deliver it to
19 Tanc. We will copy it. Tanc will get a copy. And then
20 we will send the original back to you.

21 MR. SCHIAVONI: Is that all right?

22 MR. HEBERLING: Sure. I mean, he's got
23 several others. I've got others.

24 Doctor, this is formal proceeding, and that's
25 the way it's going to be.